

CHEMICAL SECURITY REGULATIONS

The Chemical Security Program at a Glance

- DHS has been given a new and aggressive authority to strengthen security at US Chemical plants nationwide and will be implementing this regulation in phases, starting with the chemical facilities that pose the very highest security risks first.
- To determine which facilities constitute “high risk,” we will require plants that fit certain criticality profiles to complete an online security assessment – called a Top Screen – through a secure DHS website.
- We will evaluate these submissions to determine which facilities have a preliminary high level security risk and thus will be covered by the regulations.
- We will divide high-risk facilities into four risk-based tiers. Facilities in these tiers will use increasingly strict security measures as the risk and consequences of a terrorist attack increase. So, for example, Tier 1 facilities would implement stricter measures than Tier 4 facilities. A majority of the facilities covered will likely belong to the lowest tier – Tier 4.
- Our initial estimates are that there could be as many as 7,000 high-risk facilities, with approximately 300-400 in the top two tiers. The Top Screen risk assessment process will help us refine the exact number of facilities ultimately to be covered.
- We will require all high-risk facilities to prepare and submit vulnerability assessments and site security plans. We will evaluate those plans for quality, and for compliance with our risk-based performance standards.
- We will ensure facilities meet performance standards, such as:
 - securing perimeters and critical targets
 - controlling access
 - deterring theft of potentially dangerous chemicals, and
 - preventing internal sabotage
- We will provide guidance to assist chemical facilities in meeting these standards. We will follow up with site inspections and audits to ensure that our performance based standards have been implemented.
- We want to work with the chemical industry rather than mandate blanket security measures. If the vulnerability assessment or site security plans do not meet our approval, the facility will need to revise the plan and re-submit. We will also provide technical assistance upon request.
- We expect accountability. Facilities that fail to meet our performance standards could face penalties of up to \$25,000 for each day during which a violation occurs, or be ordered to halt operations until security is brought up to a level we feel appropriate.
- We recommend all companies download the interim final regulation, which is available in the *Federal Register*, and at: www.dhs.gov/chemicalsecurity.

State/Local Pre-Emption

- Some states have existing laws for regulating chemical facilities. Only state laws and requirements that conflict or interfere with these regulations or the purpose for the regulations will be preempted. Currently, the department has no reason to conclude that any existing state laws and regulations are applied in a way that would impede the federal rule.

Covered Facilities

Facilities that have chemicals in quantities that:

- If released from containment, have the ability to produce significant public health impacts. This includes inhalation toxins (e.g., chlorine), fuel-air explosives, and highly flammable materials.
- If stolen or diverted by terrorists, may be used either by themselves or in conjunction with other materials as an explosive, a chemical weapon, or a weapon of mass effect.
- Are critical to the Nation’s economy or security.
- DHS is making available, with the issuance of the Interim Final Rule (IFR), a draft list of those chemicals and Screening Threshold Quantities (STQs) that DHS proposes to use to determine whether to further evaluate the risk of chemical facilities. This list is an appendix in the IFR.

Exemptions

The Act specifically exempts those facilities already covered by certain, specified Federal laws:

- Public water systems (as defined by section 1401 of the Safe Drinking Water Act)
- Water treatment works facilities (as defined by section 212 of the Federal Water Pollution Control Act)
- Any facilities owned or operated by the Departments of Defense and Energy
- Facilities regulated by the Nuclear Regulatory Commission
- Maritime facilities regulated by the Coast Guard under Part 105 of the Maritime Transportation Security Act

Data Protection

DHS is authorized to provide robust protections for chemical facility security information, including information that facilities submit to DHS, such as Top-Screen information, Security Vulnerability Assessments and Site Security Plans. Specifically, the IFR requires that this and related information—what the IFR calls Chemical-terrorism Vulnerability Information, or “CVI”—shall be protected from public disclosure. CVI will be shared with state and local officials, including law enforcement officials and first responders, as appropriate.

Alternative Security Plans

Under the Alternative Security Program described in the IFR, the Department will not accept previously completed Security Vulnerability Assessments from facilities in the three highest-risk tiers. These facilities will need to complete a new Security Vulnerability Assessment using the Department’s system. The Department *will* accept for review previously completed Security Vulnerability Assessments from Tier 4 facilities. And the Department will accept previously completed Site Security Plans from facilities in all tiers. When the Department accepts for review either previously completed Security Vulnerability Assessments or Site Security Plans, however, the Department may still reject them if they do not meet the requirements of the statute or the regulations.